



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0012]

Hours of Service of Drivers: Application for Exemption; American Trucking Associations, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant motor carriers transporting security-sensitive hazardous materials (HM) requiring a security plan an exemption from the Federal hours-of-service (HOS) regulations that prohibit commercial motor vehicle (CMV) drivers from driving a CMV if more than 8 consecutive hours have passed since the driver's last off-duty or sleeper-berth period of 30 minutes or more. American Trucking Associations, Inc. (ATA) requested the exemption on behalf of all motor carriers that transport certain HM shipments requiring security plans under regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA). These plans normally require a driver to attend such cargo while the CMV is stopped, which is an on-duty activity under the HOS rules. Exempt drivers may now count their on-duty attendance of HM cargo toward the required 30-minute rest break requirement provided they perform no other on-duty activity. This exemption parallels § 395.1(q) of the Federal Motor Carrier Safety Regulations (FMCSRs) that allows drivers who are attending loads of certain explosives to count on-duty attendance time toward their rest break so long as they engage in no other on-duty activity.

DATES: The exemption is effective [INSERT DATE PUBLISHED IN THE FEDERAL REGISTER] and expires on August 21, 2017.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325; Email: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Driver Attendance and Rest Breaks

Some shipments of property by CMV require that the vehicle be attended at all times, such as shipments of explosives, weapons, or radioactive materials. Constant attendance of the CMV may be explicitly required by Federal or State law, or by the terms of the shipment contract. For example, Section 397.5 of the FMCSRs requires drivers transporting cargo classified as Division 1.1, 1.2, or 1.3 (explosive) materials to attend the cargo at all times.

On December 27, 2011, FMCSA published a final rule amending the HOS rules (76 FR 81134). The Agency added a new requirement that drivers obtain a rest break: “After June 30, 2013, driving is not permitted if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes.” (§ 395.3(a)(3)(ii)). Thus, drivers must expand a fueling stop or other break to ensure that they go off duty (or into the sleeper berth) for at least 30 consecutive minutes to satisfy this requirement. The drivers must make an entry on their record of duty status (RODS) showing the off-duty time.

By definition, on-duty time includes all time “... [p]erforming any other work in the capacity, employ, or service of, a motor carrier” (§ 395.2). A driver attending a CMV is on duty. During the 2011 HOS rulemaking, motor carriers of hazardous materials identified the conflict between HM attendance under § 397.5 and the rest-break requirement. As a result, FMCSA included § 395.1(q) in the 2011 HOS amendments. This section permits drivers who are attending a motor vehicle transporting Division 1.1–1.3 explosives, but performing no other work, to log a period of at least 30 consecutive minutes of the time spent attending the CMV toward the break. The driver annotates his log to indicate when the § 395.1(q) break was taken.

The time is on-duty time, and counts against the driver's maximum time on duty of 60 hours in 7 days (in some cases, 70 hours in 8 days).

Request for Exemption

Another Federal agency, PHMSA, requires motor carriers transporting materials requiring placarding under 49 CFR part 172, subpart F, or certain agents and toxins identified in § 172.800(b)(13) that do not require placarding, to develop special plans that account for personnel, cargo, and en route security (49 CFR 172.800-804). Most carriers include constant attendance on cargo in these security plans. Because attendance on a CMV is considered on-duty time under the HOS rules, drivers who are required by their carrier's HM security plan to attend the CMV at all times cannot go off duty to satisfy the HOS rest-break requirement.

ATA filed this exemption request on behalf of all motor carriers whose drivers transport HM loads subject to the PHMSA security plan requirement. ATA asserts that allowing these drivers to count up to 30 minutes of their attendance time as the required rest break if they perform no other on-duty activities during the break would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. It asserts that attendance is unlikely to contribute to driver fatigue and that allowing these drivers to maintain their attendance of these loads provides better security than if the driver has to leave the vehicle to obtain 30 minutes off duty.

Public Comments

The FMCSA published a notice announcing and requesting public comment on ATA's exemption request on May 1, 2015 (80 FR 25004). Thirteen comments were submitted. Three individuals expressed concern that the exemption was only of value to large trucking firms and that the Agency should deny all applications for exemption. Advocates for Highway and Auto Safety thought the exemption was overly broad, permitting motor carriers engaged in qualifying HM shipments to use the exemption for their shipments of non-HM cargo. Several trade groups and two drivers favored the application as a necessary solution to a regulatory dilemma.

FMCSA Response

FMCSA has evaluated ATA's application for exemption and the public comments submitted. Opponents of the exemption did not address the regulatory dilemma described in the application for exemption and echoed by the comments of drivers and trade organizations supporting the exemption. The Agency finds the arguments in favor of the exemption persuasive. FMCSA believes it has designed terms and conditions for this exemption sufficient to relieve this dilemma while preventing its abuse. Motor carriers may only use this exemption when their drivers are actually transporting HM that requires placarding or includes a select agent or toxin identified in § 172.800(b)(13), and for which a security plan has been filed under §§ 172.800-804. If a driver is not transporting qualifying HM materials, he or she is not entitled to substitute attendance for the required off-duty break. Drivers operating under this exemption may count up to 30 minutes of their on-duty attendance time toward a required rest break, if they perform no other on-duty activities during the rest-break period.

It should be noted that there is no motive for a driver or carrier to claim this exemption when not entitled to it. A driver who is not required to constantly attend his or her vehicle must take the minimum 30-minute rest break as off-duty time, which does not count against the 7 or 8-day limit of 60 or 70 hours on-duty. A driver claiming this exemption unnecessarily would be required to take the same rest breaks, but would be on-duty and the time would count against the 60 or 70-hour limit.

FMCSA Decision

In consideration of the above, FMCSA has determined that it is appropriate to provide a two-year exemption from the 30-minute break requirement for carriers whose drivers transport HM loads requiring placarding under 49 CFR part 172, subpart F, or select agents and toxins identified in § 172.800(b)(13) that do not require placarding, and who have filed security plans requiring constant attendance of HM in accordance with §§ 172.800-804. Drivers must annotate their RODS to show the on-duty time claimed as a rest break to satisfy a security plan requiring attendance of HM loads.

Under these terms and conditions described below, the application for exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. Motor carriers utilizing the exemption will be required to report any accidents, as defined in 49 CFR 390.5, to FMCSA. The exemption is eligible for renewal at the end of the two-year period.

Terms and Conditions of the Exemption

Extent of the Exemption

This exemption is limited to drivers transporting HM loads requiring placarding under 49 CFR part 172, subpart F, or select agents and toxins identified in § 172.800(b)(13) that do not require placarding, and who have filed security plans requiring constant attendance of HM in accordance with §§ 172.800-804. This exemption is limited to motor carriers that have a “satisfactory” safety rating or are “unrated”; motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from utilizing this exemption. Drivers must have a copy of the exemption document in their possession while operating under the terms of the exemption and must present it to law enforcement officials upon request.

Accident Reporting

Motor carriers must notify FMCSA by email addressed to MCPSD@DOT.GOV with 5 business days of any accident (as defined in 49 CFR 390.5) that occurs while its driver is operating under the terms of this exemption. The notification must include:

- a. Identifier of the Exemption: “HM”
- b. Name of operating carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver’s name and license number,
- f. Name of co-driver, if any, and license number
- g. Vehicle number and state license number,
- h. Number of individuals suffering physical injury,
- i. Number of fatalities,
- j. The police-reported cause of the accident,

k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and

l. The total driving time and total on-duty time prior to the accident.

Safety Oversight of Carriers Operating Under the Exemption

FMCSA expects each motor carrier operating under the terms and conditions of this exemption to maintain its safety record. However, should safety deteriorate, FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public interest. Authorization of the exemption is discretionary, and FMCSA will immediately revoke the exemption of any motor carrier or driver for failure to comply with the terms and conditions of the exemption.

Preemption

During the period the exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption [49 U.S.C. 31315(d)].

Issued on: August 6, 2015.

T. F. Scott Darling, III,
Chief Counsel.

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